



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 08/945,459
 Applicant : Makishima et al
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 Examiner : David S. Romeo

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TERMINAL DISCLAIMER TO OBLVIAE A PROVISIONAL
DOUBLE PATENTING REJECTION OVER A PENDING SECOND APPLICATION

Director of the United States Patent
 and Trademark Office
 P.O. Box 1450
 Alexandria, Virginia 22313-1450

Sir:

The owner, Biopharm Gesellschaft zur Biotechnologischen
 Entwicklung von Pharmaka mbH, of Heidelberg, Germany has a 100
 percent interest in the instant application hereby disclaims,
 except as provided below, the terminal part of the statutory term
 of any patent granted on the instant application, which would
 extend beyond the expiration date of the full statutory term
 defined in 35 U.S.C. 154 to 156 and 173 as shortened by any
 terminal disclaimer filed prior to the grant of any patent
 granted on pending second Application Serial No. 10/365,231,
 filed on February 12, 2003, of any patent on the pending second
 application. The owner hereby agrees that any patent so granted
 on the instant application shall be enforceable only for and
 during such period that it and any patent granted on the second

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application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of any patent granted on the second application, as shortened by any terminal disclaimer filed prior to the patent grant, in the event that any such granted patent: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321, has all claims cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Statement under 37 C.F.R. 3.73(b)

Biopharm Gesellschaft zur Biotechnologischen Entwicklung von Pharmaka mbH is the assignee of 100 percent interest in the instant application, by virtue of an assignment recorded on May 26, 2005 in the U.S. Patent and Trademark Office at Reel 015371 and Frame 0430.

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The undersigned, whose title is supplied below, is empowered to act on behalf of the owner.

Declaration

The undersigned hereby declares that all statements made herein of his/her own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Biopharm Gesellschaft zur
Biotechnologischen Entwicklung von
Pharmaka mbH

By: 
signature

Typed Name: Dr. Michael Krause

Typed Title: Head of Patent Department

Date: Nov 11, 2005

